

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO

ROBERT WALKER,	:	CASE NO. CA-21-3504
Plaintiff-Appellee,	:	Trial Court Case No. 2:20-cv-03414
v.	:	JOINT MOTION FOR INDICATIVE RULING OF PLAINTIFF-APPELLEE ROBERT WALKER AND DEFENDANT- APPELLANT NAUTILUS, INC.
NAUTILUS, INC.,	:	
Defendant-Appellant.	:	

Pursuant to Fed. R. Civ. P. 62.1, Plaintiff Robert Walker ("Plaintiff") and Defendant Nautilus, Inc. ("Nautilus") jointly request an indicative ruling that this Court will evaluate a proposed settlement reached between the parties and conduct a fairness hearing regarding settlement upon limited remand from the Sixth Circuit Court of Appeals ("Sixth Circuit"). A proposed Order granting this Joint Motion is attached.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR INDICATIVE RULING OF
PLAINTIFF-APPELLEE ROBERT WALKER ET AL. AND DEFENDANT-
APPELLANT NAUTILUS, INC.**

Pursuant to Federal Rule of Civil Procedure 62.1, Plaintiff Robert Walker ("Plaintiff") and Nautilus, Inc. ("Nautilus" or "Defendant") (the "Parties") jointly request an indicative ruling that the Court will, upon remand from the Sixth Circuit Court of Appeals ("Sixth Circuit"), evaluate a proposed class action settlement and conduct a fairness hearing.

I. AN INDICATIVE RULING IS APPROPRIATE UNDER THE FEDERAL RULES

On September 29, 2020, Nautilus filed a motion to compel arbitration or, in the alternative to dismiss or strike Plaintiff's claims. (Doc. 13, Motion). On May 28, 2021, the Court denied Nautilus' motion, and Nautilus filed a notice of appeal. (Doc. 29, Order; Doc. 30, Notice of Appeal). While on appeal, a mediation conference was scheduled with Sixth Circuit mediator John A. Minter pursuant to Sixth Circuit Rule 33. The parties engaged in multiple arms'-length mediation conferences under the guidance and supervision of Mr. Minter, beginning on June 28, 2021 and ending on September 8, 2021, as well as in continued email exchanges and discussions, among other things, between formal mediation sessions. Nautilus' appeal is currently pending in the Sixth Circuit.

Rule 23(e) governs class action settlements and mandates that the court may approve a settlement upon holding a fairness hearing and concluding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); Gascho v. Glob. Fitness Holdings, LLC, 822 F.3d 269, 277 (6th Cir. 2016). In 2007, the Sixth Circuit set out the factors that guide the court's inquiry:

(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Id. at 276 citing Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Gen. Motors Corp., 497 F.3d 615, 631 (6th Cir. 2007).

Because this case is on appeal in the Sixth Circuit, this Court does not have jurisdiction to evaluate the proposed settlement and conduct a fairness hearing. However, if a timely motion is made for relief that the district court lacks authority to grant because of a pending appeal, the district court may state in an indicative ruling that it would grant the motion or that it raises a substantial issue. Federal Rule of Civil Procedure 62.1(a)(3); Wilson v. Long, No. 20-5227, 2020 U.S. App. LEXIS 37096 at 2 (6th Cir. Nov. 24, 2020). If the district court determines that it would either grant the motion or that it raises a substantial issue, the court of appeals may then remand the matter to the district court for consideration under Federal Rule of Appellate Procedure 12.1. See Universal Life Church Monastery Storehouse v. Nabors, No. 19-6217, 2020 U.S. App. LEXIS 24457 at 2 (6th Cir. Aug. 3, 2020). The parties must promptly notify the circuit clerk, and "the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal." Federal Rule of Appellate Procedure 12.1(b); Id. Therefore, the Court should issue an indicative ruling that it would evaluate the proposed settlement and conduct a fairness hearing pursuant to Rule 23(e)(2).

II. CONCLUSION

Based on the foregoing, the Parties respectfully request that this Court enter the attached proposed Order indicating that it will accept the limited remand from the Court of Appeals and proceed evaluate the proposed settlement and conduct a fairness hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 11th day of October, 2021, I electronically filed the foregoing Motion to Remand of Defendant-Appellant Nautilus, Inc. with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF participants:

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